Call for Expressions of Interest to Develop and Operate a Fixed Satellite Space Station in Orbital Position 118.7° W Longitude to Serve the Canadian Market and Beyond

Industry Canada Notice DGRB-015-99
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Comments of 3037937 Nova Scotia Company on a Potential Competitive Licensing Process

Introduction

1. These comments are submitted by 3037937 Nova Scotia Company (referred to herein as the “Applicant”) in response to Industry Canada’s invitation in the above-noted public notice. In a separate document, the Applicant has filed an expression of interest to develop and operate a fixed satellite space station in orbital position 118.7° W longitude.

2. In these comments, the Applicant will address one issue. The Applicant submits that Industry Canada should ensure that Canadians in all regions of Canada have access to a fully competitive market for satellite services. In order to achieve this goal, Industry Canada should exclude Telesat Canada and its affiliates from eligibility to be licensed to develop and operate a fixed satellite space station in orbital position 118.7° W longitude.

Eligibility Criteria Should Promote Competitive Alternatives in the Supply of Satellite Services to all regions of Canada

3. Section 7 of the Telecommunications Act sets forth the objectives for Canada’s telecommunications policy. Included in these objectives are two important themes that are central to the issue of eligibility for licensing in this proceeding, namely the objective that telecommunications services be accessible to Canadians in all regions of Canada, and that telecommunications services be provided through the operation of
market forces. These telecommunications policy objectives are worded as follows in section 7:

(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;

(f) to foster increased reliance on market forces for the provision of telecommunications services. (underlining added)

4. Today, Telesat Canada is the monopoly supplier of fixed satellite services to Canada. With the opening of the Canadian market for fixed satellite services (“FSS”) to competitive entry on March 1, 2000, Telesat will continue to be the dominant supplier of FSS to Canadian customers.¹ Telesat will, however, face a degree of competition in southern Canada where some US and other FSS operators provide coverage from their existing satellites. A subset of these foreign operators may also provide coverage to all or a portion of Canada’s regions, including Canada’s northern regions.

5. Canadian policy makers have not assumed that foreign operators will provide FSS to Canada’s north. Indeed, in recognition that there is significant uncertainty on this score, in Industry Canada’s Policy Framework for the Provision of Fixed Satellite Services, RP-008, December, 1998, Industry Canada stipulates that Canadian FSS licensees will be required to serve all regions of Canada, including northern Canada:

Industry Canada recognizes the importance of fixed satellites operating in these four orbital positions to serve Canadians in all regions of Canada, including Northern Canada. The Department will continue to require that these four orbital positions are developed to provide advanced fixed satellite services to all regions of Canada. (RP-008, p. 7, underlining added)

6. The Canadian Radio-television and Telecommunications Commission (the “CRTC”) has also expressed concern about the level of expected FSS in Canada’s north. In Telesat Canada - Forbearance from the Regulation of RF Channel Services, Telecom Decision CRTC 98-24, 17 December 1998, the CRTC denied Telesat’s request for regulatory forbearance of its RF channel services effective March, 2000. The Commission explained that, even with expected foreign entry, it was still worried that

¹In addition, as the operator of Nimiq, Telesat operates Canada’s only BSS satellite.
Telesat will continue to possess market power in certain FSS market segments, notably to Canada’s northern regions:

55. The Commission notes that, based on the information provided by Telesat, coverage by individual satellites ranges widely. Many foreign satellites provide only limited coverage, for example covering one region such as Southern, Eastern or Western Canada. A more limited number of foreign satellites provide significant coverage of all of Canada, but often omit coverage of one of Northern, Eastern or Western areas. Very few satellites provide coverage of Canada approaching that of Telesat’s satellites when signal strength in far northern locations is taken into consideration.

56. The high Arctic is the most difficult region to serve. Based on the Commission’s assessment of the coverage information provided by Telesat, there is C-band coverage comparable to Telesat’s provided across the high Arctic by a few U.S. satellites. However, in the Commission’s view, Telesat has not demonstrated through coverage maps that there is, or will necessarily be, coverage comparable to the Anik satellites on Ku-band for the high Arctic as a region, although the company has shown that particular locations have coverage.

83. The Commission concludes that Telesat has not provided sufficient evidence to enable a determination at this time that, as a question of fact, competition will be sufficient in the relevant market to protect the interests of users. Specifically, service to the far North, broadcasting users dependent on Telesat’s "Hot Bird" and DTH service providers are expected at this time, to remain subject to the exercise of market power by Telesat. (underlining added)

7. Telesat’s market power in the supply of FSS, particularly in providing service to the far North, can be leveraged to achieve or increase market power for Telesat in southern markets as well. Many FSS users, notably broadcasting undertakings, will want to offer their signals in both northern and southern markets. If these users are forced by insufficient competition to use Telesat for northern service, their choice of FSS supplier for southern Canada service will, as a practical matter, already be made.

8. If Telesat is awarded a licence to operate a satellite in orbital position 118.7° W longitude, nothing will have been done to lessen the market power held by Telesat and which the CRTC identified in Telecom Decision CRTC 98-24. By contrast, if Telesat is excluded from participation in this licensing process, a Canadian competitive alternative to Telesat will soon provide service to all regions of Canada, and Telesat’s market power will be significantly reduced. Ultimately, the availability of competing suppliers that are licensed by Industry Canada will clearly benefit Canadian users of satellite services.
9. If Telesat is allowed to participate in the competitive licensing process for the orbital position 118.7° W longitude, the integrity of the process will be seriously undermined. Telesat will not be applying for an orbital position in like manner as other contenders, for Telesat alone will be applying to preserve its market power. Telesat will attempt to safeguard the future profit stream it expects to receive by dint of its market power, and as such, it has an incentive to make offers that no economically rational competitor can be expected to match. This will occur regardless of whether an auction or comparative selection process is chosen. A “level playing field” for contenders cannot possibly exist under these circumstances. The best way to prevent this undermining of the competitive licensing process is to exclude Telesat from eligibility to participate in the process.

10. In past licensing proceedings, Industry Canada has employed eligibility criteria as a means of achieving a more competitive telecommunications marketplace. The Department’s 1995 PCS proceeding and the recent 24/38 GHz proceeding are two examples where dominant incumbents were rendered ineligible for certain new frequencies, in order that new operators be encouraged to enter the market. This approach should guide Industry Canada in the upcoming process of licensing a FSS operator for orbital position 118.7° W longitude.

To Conclude

11. To conclude, the Applicant submits that Industry Canada should seek to promote competitive entry in the supply of FSS by Canadian licensed operator. Telesat’s dominance of the Canadian marketplace, and the CRTC’s concern about Telesat’s market power in the supply of FSS, particularly in respect of northern Canada service, leads to the conclusion that Telesat should be ineligible to participate in the process to award a FSS licence to operate in orbital position 118.7° W longitude.

All of which is respectfully submitted this 15th day of December, 1999.